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ABSTRACT

Few rights are as basic as acquiring a home of one's choice. The home and neighborhood are the environment in which families live and rear their children. For minorities, the home usually means housing vacated by whites, who, because of their race as well as ability to pay, are able to acquire a more desirable dwelling elsewhere. Congress, in 1968, incorporated fair housing legislation into the Nation's body of civil rights law. Yet between 1960 and 1970 residential segregation actually increased. That the housing laws have not had an impact on reversing the patterns of segregated housing underscores the complexity of the denial of equal housing opportunity to minority groups. Like other social problems that have deep roots in history, fair housing cannot be understood without housing and residential segregation involve a variety of issues. Many of these are legal in nature, involving the scope of protection against housing discrimination afforded by our laws and Constitution. Others involve fundamental questions of the relationship between Government and the people and how to strike the proper balance between protection of the rights of home seekers and those of property owners. Still others involve practical questions such as the effect of racial integration on property values and the relative importance of economics and discrimination as factors that determine where people live. (Author/JM)

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UNDERSTANDING FAIR HOUSING

U.S. COMMISSION ON CIVIL RIGHTS Clearinghouse Publication 42 February 1973

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The U.S. Commission on Civil Rights is a temporary, independent, bipartisan Agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their rights to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin;

Appraise Federal laws and policies with respect to equal protection of the laws because of race, color, religion, sex, or national origin;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin.

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INTRODUCTION

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

With this preamble, Congress, in 1968, incorporated fair housing legislation into the Nation's body of civil rights law. Housing was the last of the major civil rights areas to receive legislative attention from Congress. Yet equal housing is of overriding importance. It is a major determinant of the quality of life afforded to minorities. Its achievement is necessary for progress in other areas of equal opportunity. Above all, it is vital to the Nation's well-being.

Few rights are as basic as acquiring a home of one's choice. The home and neighborhood are the environment in which families live and rear their children. For minorities, the home usually means housing vacated by whites who, because of their race as well as ability to pay, are able to acquire a more desirable dwelling elsewhere. The neighborhood is often a deteriorating ghetto or barrio isolated from the rest of the community.

Housing is a key to improvement in a family's economic condition. Homeownership is one of the important ways in which Americans have traditionally acquired financial capital. Tax advantages, the accumulation of equity, and the increased value of real estate property enable homeowners to build economic assets. These assets can be used to educate one's children, to take advantage of business opportunities, to meet financial emergencies, and to provide for retirement. Nearly two of every three majority group families are homeowners, but less than two of every five nonwhite families own their homes. Consequently, the majority of nonwhite families are deprived of this advantage.

Housing is essential to securing civil rights in other areas. Segregated residential patterns in metropolitan areas undermine efforts to assure equal opportunity in employment and education. While centers of employment have moved from the central cities to suburbs and outlying parts of metropolitan areas, minority group families remain confined to the central cities, and because they are confined, they are separated from employment opportunities. Despite a variety of laws against job discrimination, lack of access to housing in close proximity to available jobs is an effective barrier to equal employment.

In addition, lack of equal housing opportunity decreases prospects for equal educational opportunity. The controversy over school busing is closely tied to the residential patterns of our cities and metropolitan areas. If schools in large urban centers are to be desegregated, transportation must be provided to convey children from segregated neighborhoods to integrated schools.

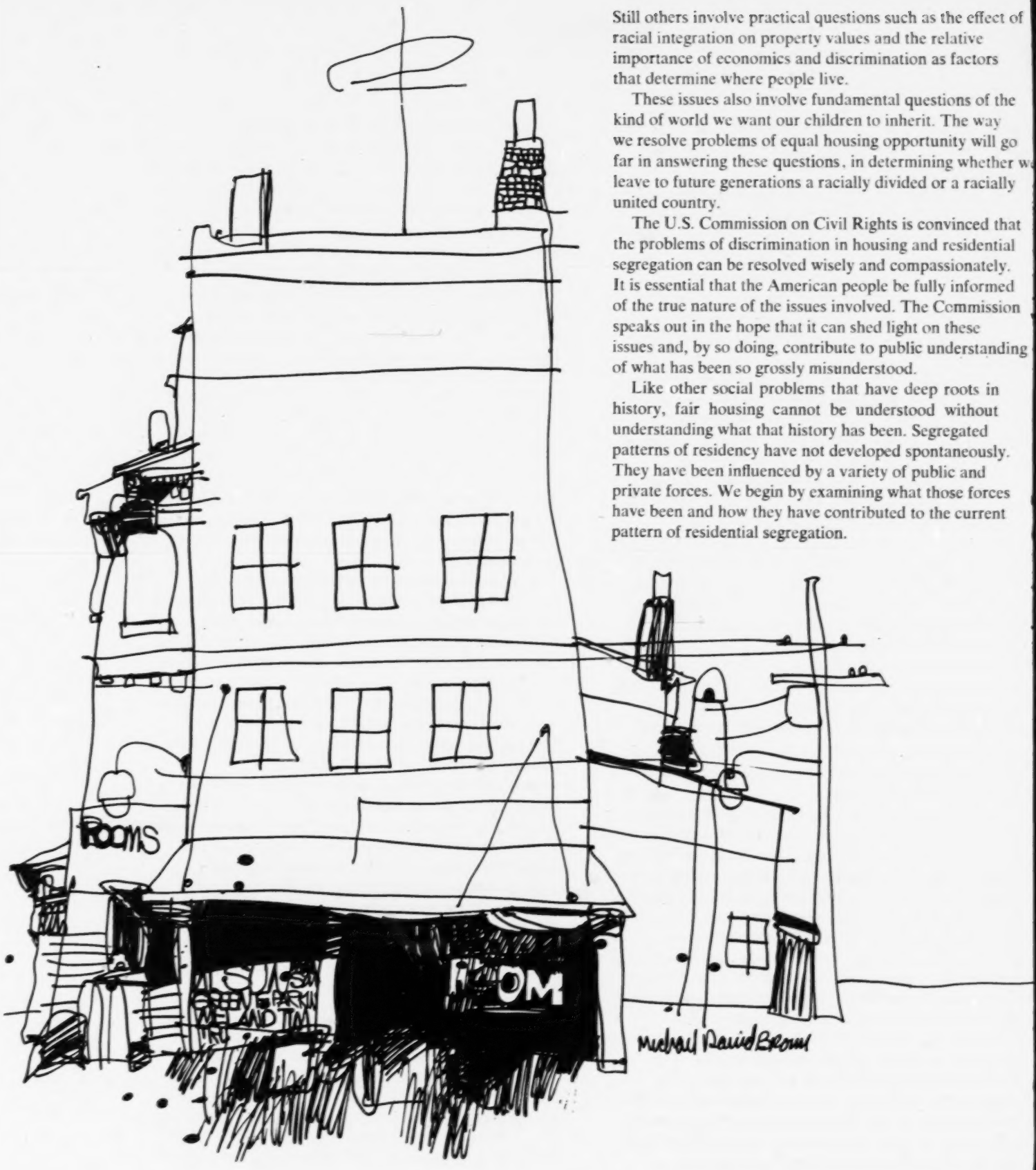
Finally, if racial divisions are to be bridged, equal housing is an essential element. Our cities and metropolitan areas consist of separate societies increasingly hostile and distrustful of one another. Because minority and majority group families live apart, they are strangers to each other. By living as neighbors they would have an opportunity to learn to understand each other and to redeem the promise of America: that of "one Nation indivisible."

In addition to the Federal Fair Housing Law, Title VIII of the Civil Rights Act of 1968, other laws exist which ban discrimination in housing. President Kennedy's Executive order on equal opportunity in housing, issued in November 1962, prohibits discrimination in housing with funds obtained through federally assisted programs. Title VI of the Civil Rights Act of 1964 forbids discrimination in a variety of federally assisted programs, including low-rent public housing and urban renewal. And the 1968 decision of the Supreme Court of the United States in *Jones* v. *Mayer* bars discrimination in *all* housing, public and private. In addition, more than half the States and thousands of municipalities in the country have enacted fair housing laws.

But these acts have not reversed the pattern of residential segregation. Between 1960 and 1970 residential segregation actually increased. Some minority group families are moving to the suburbs, but in far smaller numbers than white families. Many suburban black families merely exchange an inner-city ghetto for a suburban black enclave. That the housing laws have not had an impact on reversing the patterns of segregated housing underscores the complexity of the denial of equal housing opportunity to minority groups.

The Nation's problems of fair housing have not been widely discussed and their complexity is not understood. Slogans like "forced housing" and "open housing" are used as substitutes for rational analysis. Judgments of the causes of housing segregation are often based on unsupported assumptions rather than on documented evidence. There is not even common understanding of the statutory term, "fair housing" which Congress left undefined. In short, the American people have not been well served by the public discussion of equal housing opportunity.

The problems of discrimination in housing and residential segregation involve a variety of issues. Many of these are legal in nature, involving the scope of protection against housing discrimination afforded by our laws and Constitution. Others involve fundamental questions of the relationship between Government and the people and how to strike the proper balance between protection of the rights of home seekers and those of property owners.



Still others involve practical questions such as the effect of racial integration on property values and the relative importance of economics and discrimination as factors that determine where people live.

These issues also involve fundamental questions of the kind of world we want our children to inherit. The way we resolve problems of equal housing opportunity will go far in answering these questions, in determining whether we leave to future generations a racially divided or a racially united country.

The U.S. Commission on Civil Rights is convinced that the problems of discrimination in housing and residential segregation can be resolved wisely and compassionately. It is essential that the American people be fully informed of the true nature of the issues involved. The Commission speaks out in the hope that it can shed light on these issues and, by so doing, contribute to public understanding of what has been so grossly misunderstood.

Like other social problems that have deep roots in history, fair housing cannot be understood without understanding what that history has been. Segregated patterns of residency have not developed spontaneously. They have been influenced by a variety of public and private forces. We begin by examining what those forces have been and how they have contributed to the current pattern of residential segregation.

THE LEGACY OF THE PAST

Segregation in housing has a long history. It is the result of past discriminatory practices in which the private housing industry and Federal, State, and local governments have been active participants. In theory, it is private parties—the builder, the real estate broker, the mortgage lender, and the private owner—who make the decisions that determine where housing will be built, how it will be financed, and to whom it will be sold or rented. In practice, Government is a key participant in these decisions. It controls most of the theoretically "private" decisions concerning housing. Government also lends financial and other support to the supposedly "private" housing industry.

The home builder can build only in accordance with zoning laws, building codes, and other appropriate local ordinances. The Federal Government offers the home builder the benefits of underwriting insurance through FHA and VA programs, while holding the builder to professional construction standards. The real estate broker is licensed by the State and is tied to an ethnical code in his business relationships with home sellers and home seekers. The mortgage lending institution is regulated by one or more State or Federal agencies and benefits from Federal backing of the lender's accounts or deposits. Finally, the courts stand ready to enforce all contractual agreements in the sale or leasing of housing.

Of the elements included in the housing industry, the one least responsible for the development of the segregated residential patterns we have today is the private homeowner. Individual prejudice has been with us for generations, but as the Commission on Race and Housing pointed out some years ago: "It is the real estate brokers, builders, and the mortgage finance institutions which translate prejudice into discriminatory action." The housing industry, aided and abetted by Government, must bear the primary responsibility for the legacy of segregated housing.

The Role of Industry

Most Americans are dependent upon private industry to supply their housing needs. They rely on real estate brokers to inform them of housing that is available. They rely on home builders to construct new housing or to rehabilitate existing units. They rely on mortgage lenders to provide the financing necessary to purchase their houses. Traditionally, the private housing industry has operated on the assumption that residential segregation is a business necessity and a moral absolute. In the forefront of those who established this tradition is the National Association of Real Estate Brokers (NAREB). Those who belong to NAREB are entitled to the exclusive use of the term "Realtor" and enjoy high prestige in the real estate profession. The membership of NAREB historically has been nearly all-white.

In 1922, NAREB published a textbook entitled "Principles of Real Estate Practice." It was used to train real estate brokers. The textbook emphasized "the purchase of property by certain racial types is very likely to diminish the value of other property."

The next year NAREB published two additional texts. One book stated that black families were a threat to property values. The other text declared "foreigners" were the most undesirable type of residents. As late as 1950, NAREB's code of ethics stated in part:

> The realtor should not be instrumental in introducing into a neighborhod a character of property or occupancy, members of any race or nationality or any individual whose presence will clearly be detrimental to property values in the neighborhood.

To NAREB and its members the housing market was really two markets—white and black; the white market was cultivated and the black market ignored. While the policies of NAREB have changed significantly over more recent years, to the point where the organization now supports the Federal Fair Housing Law, the effects of its past policies in fostering residential segregation remain with us.

Private builders, while not as outspoken on the necessity of residential segregation as members of NAREB, nevertheless, acted in accordance with the separate market principle. Thus in the post-Second World War housing boom of the 1940's and 1950's, giant subdivisions were built from which minority families were excluded. The only new housing available to minorities consisted of a comparatively small number of units located in minority enclaves and designated for minority occupancy.

Mortgage lending institutions played the role of "silent partner" in establishing and maintaining a racially separate housing market. At best, lending institutions acquiesced passively in the discriminatory practices of the builders and the brokers with whom they did business. At worst, they refused to finance builders who wanted to provide housing on a nondiscriminatory basis or to make loans available to home buyers—black or white—who desired to purchase housing in integrated neighborhoods. Their defense for these policies was twofold: first, that integrated housing was an unsound investment; and, second, that to finance such housing would antagonize valuable customers.

The policies of home builders and mortgage lenders, like those of NAREB, have changed in recent years. They now support the principles of fair housing. But the effects of their past discriminatory policies persist.

The Role Of State And Local Governments

State and local governments were active participants in establishing residential segregation. In some cases, they outstripped private industry in their insistence on racial exclusiveness by adopting laws to assure it. Early in the 20th century, many American communities enacted zoning ordinances requiring block-by-block racial segregation. Between 1910 and 1917, these racial zoning ordinances were upheld in more than 15 State courts. In 1917, however, the Supreme Court of the United States, in *Buchanan* v. *Warley*, declared these ordinances unconstitutional. Despite this ruling, racial zoning ordinances were maintained in many communities and legal attempts to enforce them in the courts were still being made as late as the 1950's. Moreover, the racial zoning ordinance was only one means by which the State could insist on housing segregation. Following the *Buchanan* decision, another exclusionary device came into widespread use—the racially restrictive covenant.

The convenant was a written agreement in which the buyer of a house promised not to sell, rent, or transfer his property to families of a specific race, ethnic group, or religion. A typical covenant read in part:

> . . . hereafter no part of said property or any portion thereof shall be . . . occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property . . . against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian race.

The restrictive covenant became so fashionable that in 1937 a leading magazine of nationwide circulation awarded 10 communities a "shield of honor" for an umbrella of restrictions against "the wrong kind of people." By 1940, according to a magazine article, 80 percent of both Chicago and Los Angeles carried restrictive convenants barring black families.

Although the covenants were private agreements, they achieved the status of law through enforcement by the judicial machinery of the State. In many cities, neighborhood improvement associations were formed to make certain the residents of the community either honored the convenants or were sued in the State court if they did not. For 30 years, the covenants were enforced. In 19 States, they were challenged and were held to be valid and enforceable. But in 1948, the Supreme Court of the United States, in *Shelley* v. *Kraemer*, ruled that enforcement of racially restrictive convenants by State courts was a violation of the Constitution. Despite this ruling, the popularity of racially restrictive covenants continued and, although unenforceable, they are sometimes included in real estate contracts and deeds today. Moreover, the patterns of residence they helped create during their heyday still persist.

Less obvious uses of State and local governmental authority have contributed to housing segregation. The authority of local governments to decide on building permits, building inspection standards, and the location of sewer and water facilities have been used to discourage private builders willing to provide housing on a non-discriminatory basis. The power of eminent domain, which authorizes Government to acquire private property for public use, has been used as a ploy to keep black families from moving into all-white communities. Learning that a new housing subdivision is intended for interracial occupancy, some communities decide the land is needed for public purposes and acquire it through eminent domain.

The Role Of The Federal Government

Until the 1930's the Federal Government was not actively engaged in the housing field. When it did enter the field, the discriminatory policies and practices of the housing industry were firmly established. The Federal Government, with its new programs of housing assistance, had an opportunity to alter the policies and practices of the housing industry. But it did not. Instead, Federal policy in housing reflected the policy of the private housing industry. The legislation establishing the new programs and new Agencies was influenced by the lobbying of the housing interests. Federal housing agencies were staffed by industry representatives and, as a result, the discriminatory practices of the industry became established Federal policy.

For example, the policies of the Federal Home Loan Bank Board (FHLBB), created in 1932 to give assistance to savings and loan associations, were influenced by the savings and loan industry, which strongly advocated racial segregation. An example of that influence was evident in 1940. In that year, the FHLBB's Division of Research and Statistics published articles on how neighborhoods were to be rated. The neighborhoods where minority groups lived were to be given low ratings, while white neighborhoods were to be given a high rating.

In 1933, the Government created the Home Owners Loan Corporation (HOLC). Its function was to assist the refinancing of small home mortgages in foreclosure during the Great Depression. The enormous help which HOLC provided American families saved many from financial ruin. In its first 3 years of operation, the Agency financed more than one million homes. The Agency was of little help to nonwhite families because it adhered to a policy of residential segregation. When HOLC acquired houses in white neighborhoods and offered them for sale, black families were not permitted to buy them. When it made loans its policy was to do so only if the loans were used to buttress racial segregation. According to the 1940 Housing Census, fewer than 25,000 of more than one million homes refinanced by HOLC went to nonwhites.

In 1934, the Federal Housing Administration (FHA) was established. The FHA mortgage insurance program was created to protect the mortgage lender from financial loss caused by the inability of the borrower to pay off the mortgage. This was an incentive to induce the lender to make money available for housing construction. FHA

quickly became a leader in the housing and home finance industry and contributed to many changes in the practices of home financing. As a result of FHA's leadership, the typical home financing vehicle—the long-term, low-interest, high-loan-to-value, fully amortized loan—was established in the housing field.

For nearly 15 years, FHA's Underwriting Manual warned of the infiltration of "inharmonious racial groups." The Manual stated: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same racial classes." Indeed, FHA was responsible for the widespread use of racial covenants following its creation. One noted authority on housing characterized FHA during the thirties and early forties as "a sort of 'Typhoid Mary' for racial covenants." Another authority described FHA policy as "separate for whites and nothing for blacks." As late as 1959, it was estimated that less than 2 percent of the FHA-insured housing built in the post-war housing boom had been available to minorities.

As with other Federal Agencies created during the 1930's, FHA filled many of its key staff positions in Washington, D.C. and in the field offices with representatives of the housing industry associated with racial segregation. When restrictive covenants were held legally unenforceable in 1948, civil rights groups, joined by the United States Attorney General, brought pressure on FHA to reverse its policy and to stop insuring properties with restrictive covenants. Eighteen months after the Supreme Court decision FHA agreed. The new FHA policy of refusing to insure mortgages on properties carrying a racial covenant applied only to covenants filed after February 1950. This left the accumulation of the first 15 years of FHA-insured mortgages protected by the covenants on thousands of homes untouched.

The patterns of racial residence we have today are a legacy of the past, in which discrimination, not choice or ability to pay, has been the principal factor that determines where minority families live. It is a national history in which Government and private industry came together to create a system of residential segregation. Residential segregation is so deeply ingrained in American life that the job of assuring equal housing opportunity to minority groups means not only eliminating present discriminatory practices but correcting the mistakes of the past as well.

FAIR HOUSING AND THE LAW

The legacy of the past has made it difficult to achieve equal housing opportunity through the processes of law. But there is a substantial body of law, through Presidential Executive orders, congressional action, and constitutional case law, that establishes fair housing as the law of the land. These laws, if enforced, can contribute to the achievement of fair housing in fact as well as in legal principle.

As in other areas of the national civil rights concern, the judiciary has pointed the way for the Nation. The Supreme Court of the United States, in the 1917 *Buchanan* case, prohibited, on constitutional grounds, local governments from requiring residential segregation. This ruling is noteworthy because in 1896 the Supreme Court had established the doctrine that legally compelled segregation in such areas as public transportation and public education was constitutionally permissible. The *Buchanan* decision destroyed the doctrine as it applied to housing. Again in 1948, in *Shelley* v. *Kraemer,* the Supreme Court struck down as unconstitutional the legal enforcement of racially restrictive covenants.

As the Court was handing down its decisions, the executive branch, through FHA and other Federal Agencies, was actively supporting residential segregation. Congress was silent.

The executive branch of the Government took fair housing action for the first time in 1962, when President Kennedy issued an Executive order on equal opportunity in housing. While it represented a significant legal step forward, his Executive order was limited. First, its guarantee of nondiscrimination was restricted largely to housing provided through the insurance and guaranty programs administered by FHA and its sister agency, the Veterans Administration (VA). But most of the Nation's housing is financed through "conventional" (non-FHA or VA) loans made by private lending institutions. Housing financed through conventional loans was not covered by the President's order.

Second, the order applied only to FHA and VA housing insured or guaranteed after the date of the order's issuance (November 20, 1962). It left hundreds of thousands of existing housing units receiving FHA and VA assistance immune from the requirement of the nondiscrimination mandate. Barely 1 percent of the Nation's housing was covered by President Kennedy's Executive order.

In 1964, Congress enacted Title VI of the Civil Rights Act of 1964, prohibiting discrimination in any program or activity receiving Federal financial assistance. Among the principal programs affected by this law were low-rent public housing, a program directed to providing housing for the poor, and urban renewal. Like President Kennedy's Executive order, Title VI excluded conventionally financed housing. Title VI also excluded most FHA and VA housing, which the Eexcutive order covered. Less than half of 1 percent of the Nation's housing inventory was subject to the nondiscrimination requirement through Title VI.

In 1968, Congress enacted Title VIII of the Civil Rights Act of 1968, the Federal Fair Housing Law. This law prohibits the discriminatory practices of all real estate brokers, builders, and mortgage lenders. Discrimination in advertising and "blockbusting" (a method by which families are induced to sell their homes through representations that their neighborhood is to be inundated by minority families) are prohibited. Houses sold without the aid of public advertising or a broker, and rooming houses in which the owners live (the so-called "Mrs. Murphy" exemption) are excepted under Title VIII. Today, more than 80 percent of all housing is subject to the requirements of the Federal Fair Housing Law.

In June 1968, 2 months after enactment of Title VIII, the Supreme Court of the United States, in the landmark case of *Jones* v. *Mayer,* ruled that an 1866 Civil Rights law passed under the authority of the 13th amendment (which outlawed slavery) bars all racial discrimination in housing, private as well as public.

By 1968 an arsenal of Federal laws prohibited housing discrimination. Taken separately, each of the laws has weaknesses to counterbalance their strengths. President Kennedy's Executive order and Title VI have strong enforcement mechanisms—the threat that Federal funds will be withdrawn from those who practice discrimination. But this applies to barely 1 percent of the housing market. Title VIII and the Supreme Court decision in *Jones* v. *Mayer,* although they provide wide coverage of the housing market, have weak enforcement powers, limited to litigation and voluntary compliance.

Taken together, however, these laws provide the basis for a comprehensive effort to establish fair housing as a fact of American life. Of major importance is that Title VIII directs all Departments and Agencies, including the Department of Housing and Urban Development (HUD), to administer programs and activities relating to housing and urban development "in a manner affirmatively to further the purposes of [fair housing]." Agencies have given little attention to this provision and have failed to use the leverage of their financial assistance programs to assure compliance with the Federal Fair Housing Law. Even in programs subject to the Executive order or Title VI, where the sanction of fund termination is required, it has rarely been used. Only a few of the FHA-aided builders, covered under the Eexcutive order, have been debarred by FHA, even in the most blatant cases of discrimination. A survey of houses with minority group

occupancy conducted by FHA illustrates the limited success achieved under the Executive order. In July 1967, FHA Insuring Office Directors conducted a survey of FHA subdivisions built after the date of President Kennedy's order. Of the more than 400,000 houses surveyed, only 3.3 percent had been sold to black families.

The penalty for violation of Title VI, withdrawal of Federal funds, has never been used by HUD in cases of discrimination. In public housing the history of HUD acquiescence in discriminatory assignment of tenants and selection of sites has contributed to the segregation and isolation of low-income, minority group families. Federal courts have found HUD guilty of continuing to condone these practices in violation of Title VI, the Federal Fair Housing Law, and the Constitution of the United States.

In urban renewal, which involves the displacement of families from slum areas, three of every five families displaced as of June 1970 were minority group members. It is with some justification that minorities, who suffer under this program in the name of urban progress, refer to urban renewal as "Negro removal." Here, too, court suits have been necessary because of HUD's failure to apply equal opportunity requirements. In December 1971, a Federal court in Detroit found HUD to be a party to the removal of a large number of black families from the city of Hamtramck, Michigan.

In other programs the courts have had to require HUD to consider fair housing goals in administering its housing programs. In *Shannon* v. *HUD*, a United States court of appeals in December 1970 found that HUD had approved the construction of a low-rent housing project in Philadelphia, under the rent supplement program, which served to increase the concentration of minorities in the area. In the face of protests by black and white residents, businessmen, and representatives of civic organizations, HUD, nevertheless, had granted the funds and permitted the project to be constructed. The court ruled that HUD had unlawfully failed to consider the racial impact of the project in approving it.

Title VIII was nearly 4 years old before HUD started to coordinate its housing programs with the provisions of the new law. In early 1972 it adopted regulations establishing criteria for the selection of sites for subsidized housing aimed at assuring locations outside areas of existing poverty and minority concentrations. HUD also adopted regulations requiring FHA-aided builders and developers to develop plans for affirmatively marketing their houses to minority families, long denied equal access to FHA housing. In addition, HUD, together with the General Services Administration, established criteria for the selection of sites for Federal installations aimed at securing an adequate supply of low- and moderate-income housing, available on a nondiscriminatory basis, in communities where Federal Agencies locate.

The principal mechanism HUD has relied upon in enforcing Title VIII is the processing of housing complaints, which is the least effective way to enforce the law. Families that complain of housing discrimination cannot be assured of immediate relief. HUD has a backlog of housing complaints and the average time for the processing of a complaint is 5 months. In some cases, HUD refers the complaints to State and local civil rights agencies for investigation. But it is unable to monitor its referrals because of the backlog of housing grievances.

Federal policy on housing discrimination has changed markedly from what it was 30 years ago but its practice in carrying out the new policy has not changed to the same extent. Commenting on the current posture of the Federal Government, the U.S. Commission on Civil Rights concluded last year:

> . . . the zeal with which Federal officials carried out policies of discrimination in the early days of the Government's housing effort has not been matched by a similar enthusiasm in carrying out their current legal mandate of equal housing opportunity. Housing discrimination and residential segregation, which the Federal Government helped to foster, remain a fact of life in the Nation's metropolitan areas.

EQUAL HOUSING OPPORTUNITY AND INDIVIDUAL PROPERTY RIGHTS

If Government's previous policies and practices in favoring housing segregation were reprehensible, the question remains how far should Government go in correcting the mistakes of the past? To the extent that Government intervenes on the side of protecting the minority home seeker, does that intervention impair the rights of private property owners? Traditionally a person's home has been a place of refuge, and Government should not lightly intrude upon the owner's dominion over it. Some contend that the proper role for Government to play, despite the experience of the past, is *not* to redress the housing imbalance it helped to create, but to leave people alone and permit the forces of the market place to operate freely.

These concerns are based on the assumption that various laws of the judicial, executive, and legislative branches of the Federal Government have reduced the rights of individual property owners in favor of furthering the rights of minority group home seekers. To what extent is this true? Do those laws shift the balance in favor of home seekers so as to impair the rights of the individual property owner? Let us examine the effect of these various Federal laws.

BUCHANAN v. WARLEY

The 1917 Supreme Court decision in *Buchanan* v. *Warley* held that a zoning ordinance maintained by the city of Louisville, Kentucky, requiring block-by-block residential segregation, violated the Constitution. In that case, there was a willing buyer and a willing seller. It was the State, through the zoning ordinance, that sought to prevent the sale. The Court's decision, far from undermining the rights of an individual property owner, was a vindication of the owner's right to sell his property without interference from outside parties: in this instance, the State.

SHELLEY v. KRAEMER

By the same token, the Supreme Court's ruling in *Shelley* v. *Kraemer* that judicial enforcement of racially restrictive convenants was unconstitutional also supported the right of private sellers and buyers to engage in a real estate transaction free from outside interference. In this case, the contract of sale was freely executed by the seller and buyer. Adjoining property owners sought to prevent the sale by calling upon the courts to intervene on the basis of the restrictive convenant. That, the Supreme Court ruled, the State courts could not do. Again, the Court ruling supported the rights of each home buyer and homeowner. No conflict existed.

Executive Order And Title VI

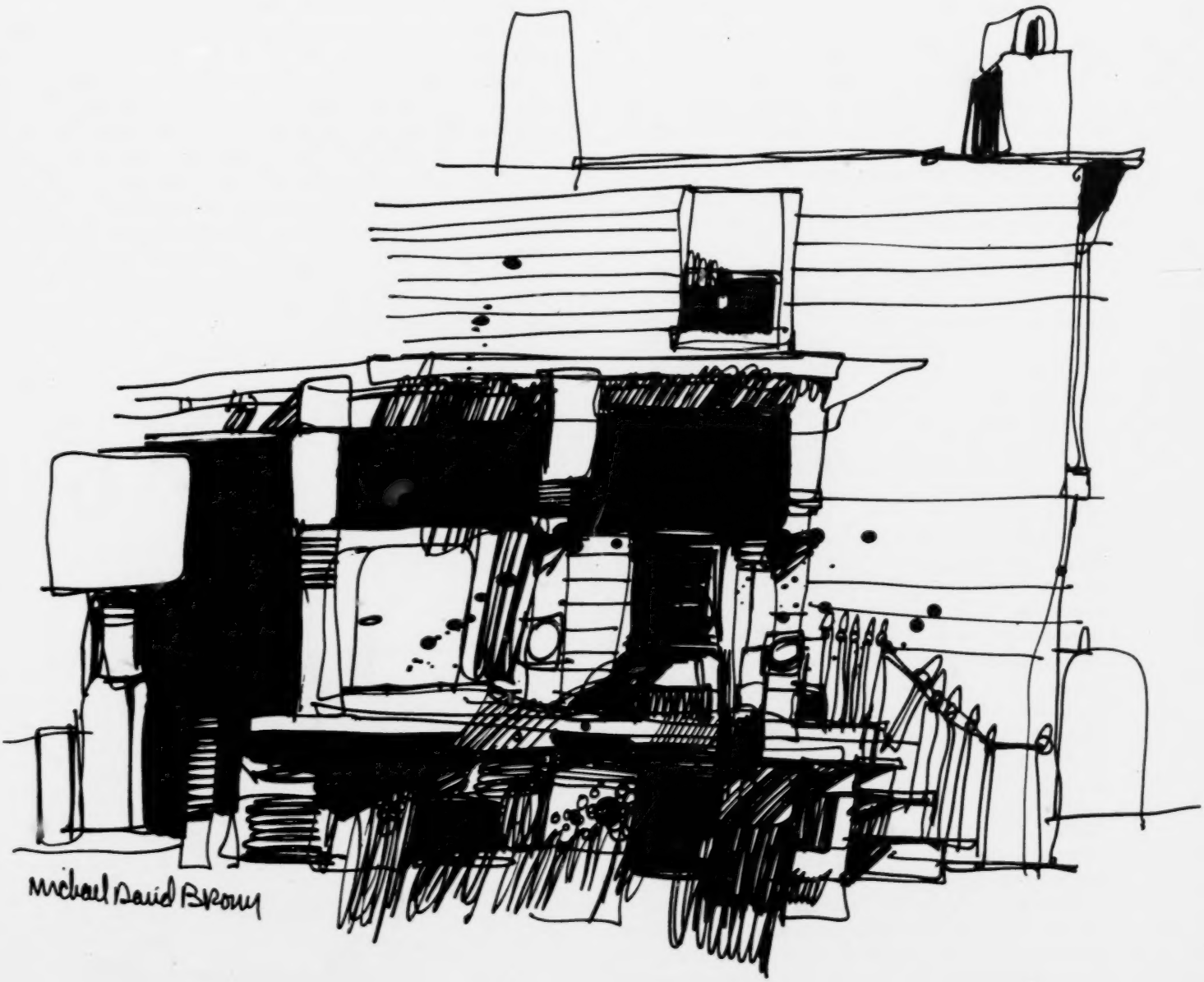
The Executive order on equal opportunity in housing and Title VI, which require nondiscrimination in the operation of federally assisted housing programs, present a case in point where Federal intervention does restrict the rights of property owners. Under the Federal housing programs covered by these two laws, Federal financial assistance is made available to builders and mortgage lenders for the purpose of stimulating mortgage credit and the construction of housing to meet the needs of the public. Participation in these programs is voluntary. Under the Executive order of Title VI, industry members are required to be nondiscriminatory as a condition of participation in the programs. In short, the Executive order and Title VI assure that the Federal Government will not support housing discrimination with its financial assistance. In law and good conscience, the Federal Government could not do otherwise. As one court announced in considering the constitutionality of racial discrimination by an FHA-aided builder:

> When one dips one's hand into the Federal Treasury a little democracy necessarily clings to whatever is withdrawn.

TITLE VIII AND JONES v. MAYER

The Federal Fair Housing Law (Title VIII) and the *Jones* v. *Mayer* decision raise the most serious question of conflict between the interest of Government to protect the right of free choice for minority home seekers and the interest of property owners to exercise full control over their property. Under the Executive order and Title VI the prohibition against discrimination applies to those builders, brokers, and mortgage lenders, who voluntarily seek to participate in Federal programs. Under these laws, the "right" of property owners to discriminate is curtailed if they choose to subject themselves to Government regulation by participating in Federal programs. But under Title VIII and *Jones* v. *Mayer*, the requirement of nondiscrimination applies virtually across-the-board—to those who participate in Federal programs and to those who do not. Without question, Title VIII and the *Jones* decision represent a restriction on the pre-existing rights of property owners. Additional questions must be asked, however, to understand the nature of this restriction and to determine whether Title VIII and *Jones* represent a proper balance between the rights of property owners and home seekers.

First, regarding Title VIII, against what parties is that law aimed? Nearly all of the provisions of the Fair Housing Law are concerned with the practices of the housing industry—builders, real estate brokers, apartment house owners, and mortgage lenders. The individual homeowner is also affected, but only insofar as the services of a broker or public advertising are used in the sale or rental of his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house. If the owner chooses to dispose of the property personally, without the use of a broker or public advertising, that person is exempt from the law. Furthermore, the resident owner of a rooming house is exempt from the statute. In short, the housing and home finance industry, and not the individual property owner, is the principal target of Title VIII.

Second, what rights traditionally associated with homeownership are restricted by Title VIII? Those in the business of housing and home finance (against whom the Fair Housing Law is principally aimed) are not homeowners in the traditional sense. Real estate brokers and mortgage lenders typically do not own the houses or apartments being sold or rented. They render a service in the form of bringing buyers and sellers together or providing funds for the purchase of property. To the extent that members of these two industries do own property (whether through real estate speculation or mortgage loan foreclosure) their sole interest is placing the property on the market for a quick turnover. Builders of subdivisions do own property. But again, their interest is in disposing of the houses they build as quickly and as profitably as possible. Owners of apartment houses also own property, often retaining ownership for many years. Typically, apartment house owners are not individuals but corporations; and their interest is in profit not residence.

Together these members of the housing and home finance industry control the housing market and can dictate where people are to live. It is to this industry that Title VIII is primarily directed. In this sense, Title VIII is within the established tradition of Government regulation of private industry in the interest of protecting the rights of the public. Furthermore, the restrictions imposed by Title VIII do not limit the use members of the industry may make of property. But it does curb their power to dictate, on the basis of race and color, where people shall live.

How does Title VIII affect the individual homeowner? Most of the rights generally associated with homeownership remain unimpaired by Title VIII. If a homeowner chooses not to sell or rent his home the fair housing law does not apply at all. If the homeowner chooses to sell or rent without the services of a representative of the housing industry, he or she is free to act on any basis, including racial discrimination. But if the services of a real estate broker or newspaper advertising are employed, the provisions against discrimination contained in Title VIII are applicable.

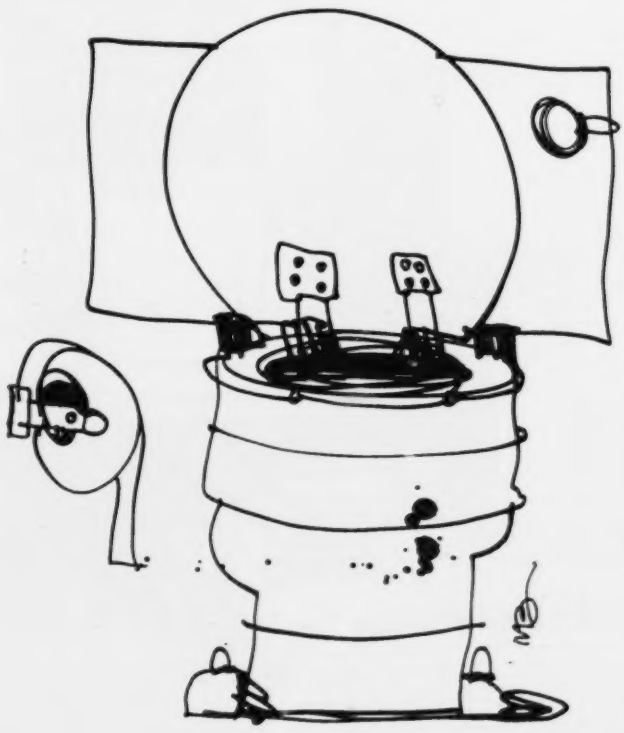
Homeowners, while not the principal target of the Fair Housing Law, nonetheless are affected because most homeowners use the services of a real estate broker or public advertising in selling their houses.

Moreover, the *Jones* v. *Mayer* decision, holding that an 1866 Civil Rights Law barred *all* racial discrimination in housing, by private as well as public parties, affects the private homeowner even more directly whether the services of a broker or public advertising are employed or not.

But Title VIII and the *Jones* case apply only when homeowners decide, of their own free will, that they wish to dispose of their private property to those who will meet their terms. They state, in effect, that they do not wish to live in their home any more, that they want dollar value in exchange for their property. Title VIII and *Jones* require minority purchasers or renters be given the same consideration as others who are willing to meet these terms.

Title VIII and *Jones* restrict the rights of homeowners. That is not new. No one has an absolute dominion over the property he owns. Property restrictions are imposed in the public interest. Zoning laws regulate the use of property. Building codes set standards of construction with which homeowners must comply. Other requirements dictate the size of houses. The restriction placed upon the homeowner by these two laws are mild in relation to other housing regulations.

Property rights have never been absolute. Traditionally, they have been subject to modification to accommodate other rights in the public interest. Title VIII and *Jones* are within that tradition. They represent, not an undermining of traditional property rights, but a means to redress an historical disadvantage that has restricted minority groups from competing on equal terms with whites in the housing market. In the Commission's view, the balance that these laws strike between the interests of homeowners and home seekers is historically just, legally sound, and morally right.



RACE AND PROPERTY VALUE ARGUMENT

The cornerstone of the separate housing market is the conviction that the entry of black families into a neighborhood is followed by a drop in property values. The fear of financial loss generated by this conviction is the most frequent reason advanced for the exclusion of racial minorities from a neighborhood. For the average homeowners his home is a major investment; and for the real estate investor, the value of his property is a legitimate concern.

Origins

Although the origin of the property value argument is not known, as early as 1910, several States and cities used it as justification for legislating racial zoning ordinances. The professional literature of the real estate industry continued to perpetuate the myth of the property value argument. As one textbook stated the argument:

> The colored people certainly have a right to life, liberty and the pursuit of happiness but they must recognize the economic disturbance which their presence in a white neighborhood causes and forego their desire to split off from the established district where the rest of their race lives.

Journals of real estate appraisal in the 1930's advocated an "intensive study" of the "presence or intrusion of discordant racial groups" in the neighborhood as an important consideration to be used when appraising a house. NAREB's Code of Ethics specifically warned of the "racial group" threat to property value, as did the Federal Government in its FHA Underwriting Manual. Lending institutions followed suit. All were convinced a "mixed" neighborhood would endanger long term financing of an area because of decreased property values. As one savings and loan official stated in the 1950's: "We make loans to colored in established areas only. If they were introduced in a new area, property values would fall 50 percent." In 1950, one researcher noted, after studying hundreds of items and examining the content of professional courses offered on the subject of appraising and real estate generally, that he had uncovered little material that deviated from or disputed the views of the real estate industry.

By the 1950's the opinion of the real estate industry began to change. NAREB changed its Code in 1952, and professional articles urged the industry to reconsider the generalizations regarding the effects of "infiltration" by blacks on property values in an area. Some real estate professionals admitted that race might be only one factor, or that racial integration could have a positive effect on real estate values. An appraiser urged his profession to "approach the problem without prejudice." He recognized that it would be difficult. "We have been brought up," he said, "with deeply ingrained emotional feelings," on the issue of race. As late as 1961 the Federal Agencies that supervise the Nation's mortgage lending institutions still held the view that minority groups moving into a neighborhood could be the cause of a decline in property values.

Myth And Reality

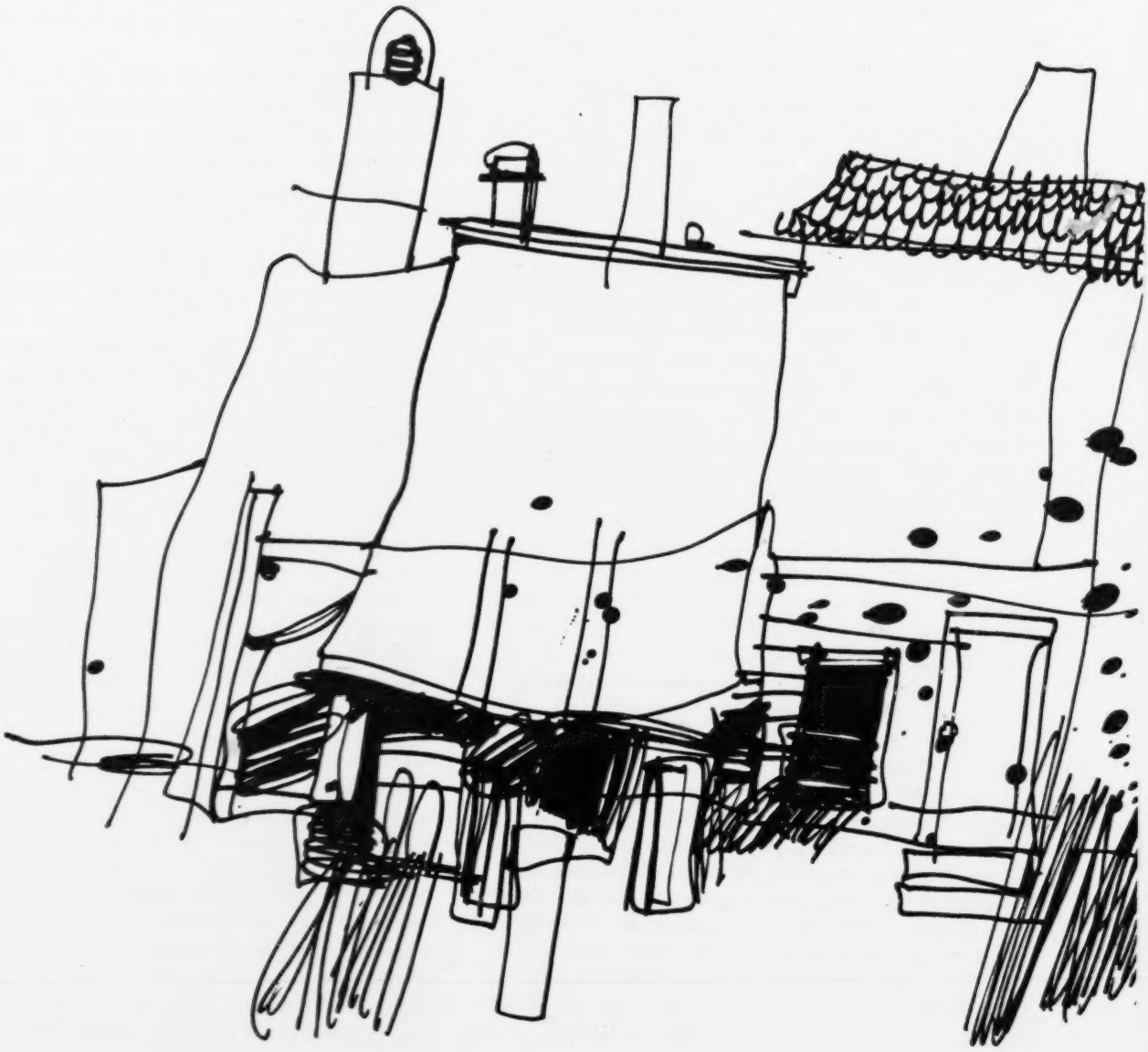
The fact is: there is no substance to the view that minority group residency inevitably leads to a decline in property values. The objective factors affecting property values have no relation to race at all. They depend upon the condition of the housing market and include a cluster of elements, such as the age and condition of the housing, the under-or-over supply of certain house styles, the price range of the housing, zoning changes, the under-or-over development of a neighborhood, and changes in neighborhood amenities.

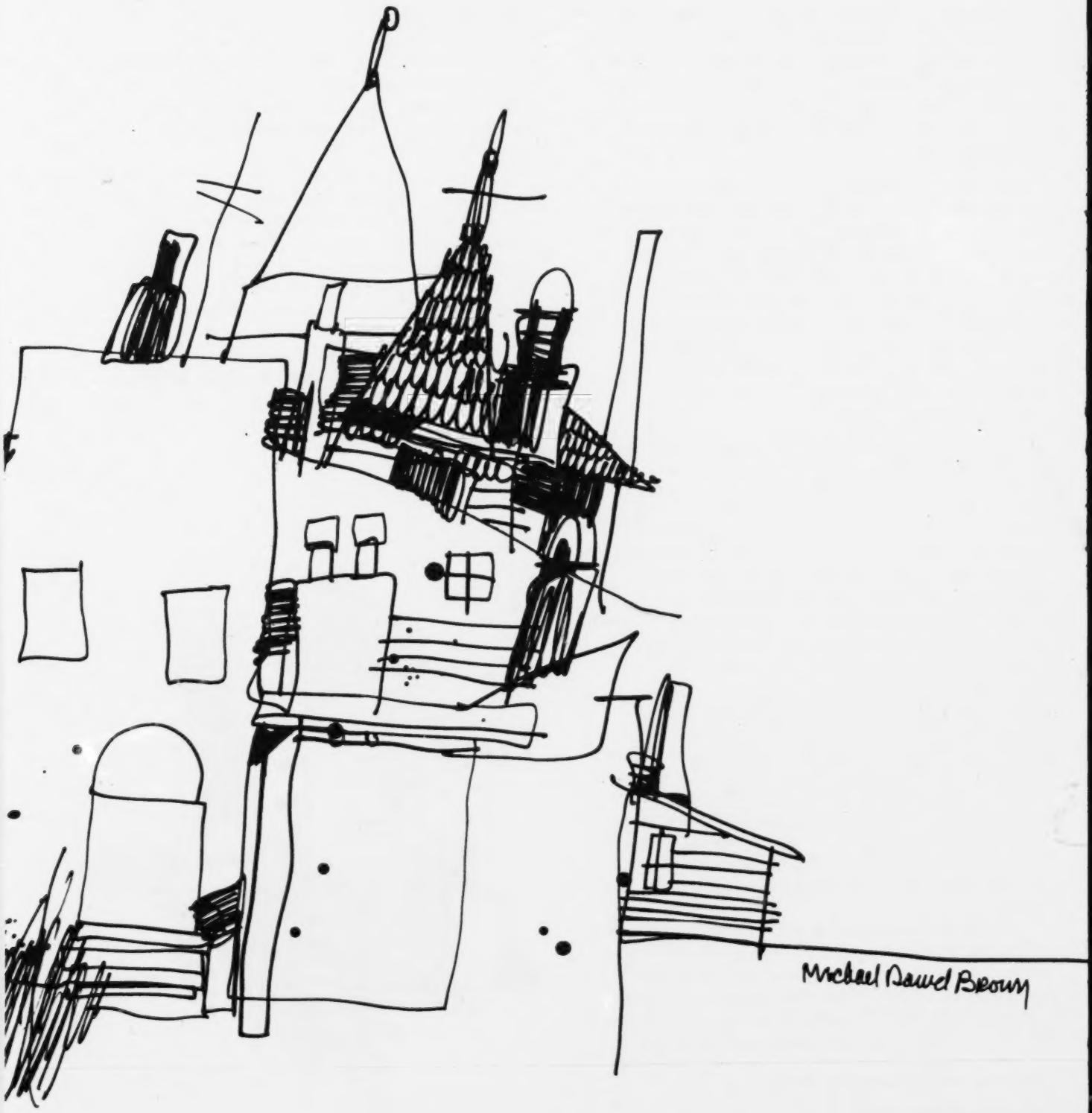
Studies made in the last 20 years rarely have concluded that property values decrease when blacks move into a previously all-white area. They support the finding that race has little effect on values and that racial integration is generally associated with stable and even increased property value. A study completed in Louisville, Kentucky in 1966 showed that of the sales of 183 houses in "changing" neighborhoods, 91 houses showed an increase in value, 73 houses showed no change in the value of the property, and 17 houses decreased in value. Another study in Plainfield, New Jersey 2 years later found that property values in a neighborhood that underwent a racial change showed the same upward trend in prices as the comparable all-white area. Other studies have drawn similar conclusions. These studies have been conducted in San Francisco, Philadelphia, Chicago, Detroit, Kansas City, Houston, and Baltimore.

The Self-Fulfilling Prophecy

Experience suggests that when the forces of the housing market operate freely, minority group place of residence does not result in property value instability, and the traditional belief about the relationship between race and property values is a myth. When this myth becomes the basis for action, however, the economic forces of the housing market can become so distorted as to make the myth a reality.

Appraisers play an important role in this process. They set the "value" on residential property for sale or for purposes of investment. As a profession, appraising is chained to the real estate industry and appraisers frequently share the same beliefs and traditional attitudes regarding race and property values as Realtors. An appraiser's professional opinion of a piece of property includes the social and economic trends of a neighborhood. He considers race as a factor, if he believes the entry of blacks into the area will affect the stability of the neighbor-

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hood. Consequently, his judgment of "value" is similarly influenced.

White residents of a neighborhood into which a black family has moved may create the problem they fear most, a decrease in property value. If a number of white homeowners list their homes for sale because of a black family's presence, others may follow, and a panic to sell is underway. The fears of the residents may materialize because they have overtaxed the market and prices must be lowered to attract buyers to balance the unusually large number of sellers. Their own actions have caused their fears to be realized—a "self-fulfilling" prophecy.

Blockbusters

Indeed, white residents do have something to fear—not black families moving into a neighborhood, but the unscrupulous "blockbusters" and speculators who feed upon those fears. The worst of these speculators solicit listings of houses for sale, deliberately inciting panic and white flight, to buy property at very low prices and re-sell to blacks at very high prices. This is now illegal, but the practice continues and homeowners are panicked into selling their houses instead of standing firm and refusing to cooperate with the speculators.

Mortgage Lenders

The financing of home purchase and improvement is crucial to the stability of property values in an area. The availability of loans is influenced by the lenders' attitude toward race and property value. The practice of "redlining" by lenders [the refusal to make any loans in a particular area] can be the cause of decreasing property value. A study by the National Urban League in 1971 found that in five major cities, the neighborhoods that underwent a racial change in the 1950's faced a withdrawal of home financing and insurance. The result was a deterioration of the neighborhood and, finally, an abandonment of the area.

In Chicago and Cleveland where "blockbusting" was used, black buyers were sold houses at inflated prices. These were the same houses that former white owners were panicked into selling at low prices. The black buyers, unable to obtain regular loans were left with impossible commitments—two mortgages, high interest rates, land contracts (under which they accumulate no equity and stand to lose the house if they fail to continue payments), and no capital with which to repair or improve their homes.

In St. Louis, mortgage lenders freely admitted to shutting off housing funds to large areas of the city except in the white neighborhoods. But in Atlanta and Detroit, also studied by the Urban League, lenders continued to make mortgage loans and home improvement monies available. Blacks were able to maintain homeownership and the value of property that had undergone a racial transformation in the two cities remained stable.

Minority Housing Need

Finally, there is another phenomenon affecting the value of property. Since minorities face a restricted housing market because of racial discrimination, their demand for housing tends to be high in areas that become "open" to them. After one or more minority families have been able to buy or rent in a previously white neighborhood, the demand by other minority families for housing in the same neighborhood may grow, thereby increasing the price of housing. Sometimes the rise in price is temporary and values fall back to a level commensurate with the original value of the property. At other times prices remain high, especially if the minority families moving into the area have higher incomes than the previous occupants.

There is no inevitable relationship between race and property values. But when the normal forces of the housing market are artifically manipulated the race-property relationship may be created. When areas previously closed to minorities are opened, the level of prices rise; and when white homeowners are induced to sell in panic, prices decline. In either case, only those who artifically manipulate the market gain from the rise and fall of property value. Minority buyers, excluded from decent housing, pay a premium for housing in neighborhoods that are "open". White residents who panic and sell assure by their action that property values will fall. Their fears are realized.

RACIAL DISCRIMINATION AND ECONOMICS

The myth of the relationship between race and housing property value persists. Today, it is expressed in a different form. Because of the civil rights laws enacted over the last decade and a half, racial discrimination has gone largely underground. Open statements of racial prejudice are rarely made by persons in positions of responsibility in public and private life. Members of the housing industry and public officials seldom argue publicly that the entry of black families into a neighborhood necessarily causes it to deteriorate. The property value argument is veiled and couched in terms of the effect low-income families will have upon property values in a neighborhood. In many communities, particularly white suburbia, measures are taken to exclude these families. Ordinances are enacted to require the zoning of large lots. Minimum square footage requirements are stepped up. Building codes that unnecessarily increase the cost of construction are tightened. And residential property is converted into public use. These measures are enacted to prevent the construction of low- and moderate-income housing, some of which minority families could occupy. The communities argue that their opposition to low- and moderate-income housing has nothing to do with race, only with economics.

Similarly, public and private housing officials explain the absence of minority group families from new suburban areas as a consequence of economic, not racial, barriers. The homes are too expensive for blacks, they explain, and the rents are more than blacks can afford.

Economics helps to explain why minority families are more poorly housed than members of the white majority. For example, median black family income is lower than that of whites, and good housing tends to be expensive. But economic factors do not entirely explain the existent widespread residential segregation. It can be explained only if racial discrimination is also weighed in the balance.

The notion that blacks and other minorities need only larger incomes to gain an equal choice of housing is not supported by fact. If that were true, it would be expected that all poor families, whether white or black, would be equally restricted in their choice of housing. The evidence indicates that segregation by race is more widespread than segregation by income.

Census figures show that poor white families are not confined to housing in the central city as are poor black families. White families are widely dispersed throughout the metropolitan areas. The percentage of poor white families who live in suburban areas comes close to equaling the percentage of white suburban residents who are *not* poor. Nearly half of all poor white families live in the suburbs, while four out of five poor black families are confined to the inner-city.

The Commission's own study of the Section 235 program of homeownership of lower-income families also documented the fallacy of the belief that economic, rather than racial, factors are the main obstacles to free housing choice for minorities. Under the Section 235 program, the Department of Housing and Urban Development provides financial subsidies to enable lower-income families to become homeowners. All families eligible to participate in the program—white and black—must be within the same income range. All houses eligible for purchase under the program—whether purchased by whites or blacks—are subject to the same restrictions as to cost. The Commission found that the program was operating freely throughout metropolitan areas. Most of the new housing was being built in the suburbs, while existing housing utilized under the program was located in the central city.

If the economic rationale used to explain racial residential patterns were valid, it would be expected that black and white families alike, would have access to suburban, as well as central city, housing. But this was not the case. The new suburban housing was occupied almost entirely by white families, while existing central city housing— generally much inferior to the suburban housing—was occupied by black families. In short, the same pattern that exists in the housing market generally was almost precisely duplicated under the 235 program. But the economic justification was absent. The Commission's investigation showed that a variety of discriminatory practices, not economics, accounted for the segregation that occurred.

A companion program to Section 235, a program of rental housing for lower-income families called Section 236, has generated the same segregated patterns of residence, again without the traditional economic rationale. Under this program, where costs and income limits are the same regarding all participating families, the projects have been occupied largely on a racially segregated basis.

Statistics on homeownership indicate that at every income level blacks have less of an opportunity than whites to become homeowners. Half of all white families earning between $3,000 and $6,000 a year are homeowners, but only a third of all black families in the same income range own homes. In the middle- and upper-income group, four of every five white families own their homes. For black families in the same income group only two out of three are homeowners.

There is evidence that opposition to low- and moderate-income housing by suburban communities is as strongly motivated by racial factors as it is by economic factors. In many cases, the economic argument against lower-income housing is used to conceal racial discrimination.

For example, some white suburban communities have prevented the construction of lower-income housing that would permit black families to move into the community, but have accepted similar housing construction planned for poor elderly persons already living within the borders of the suburban community.

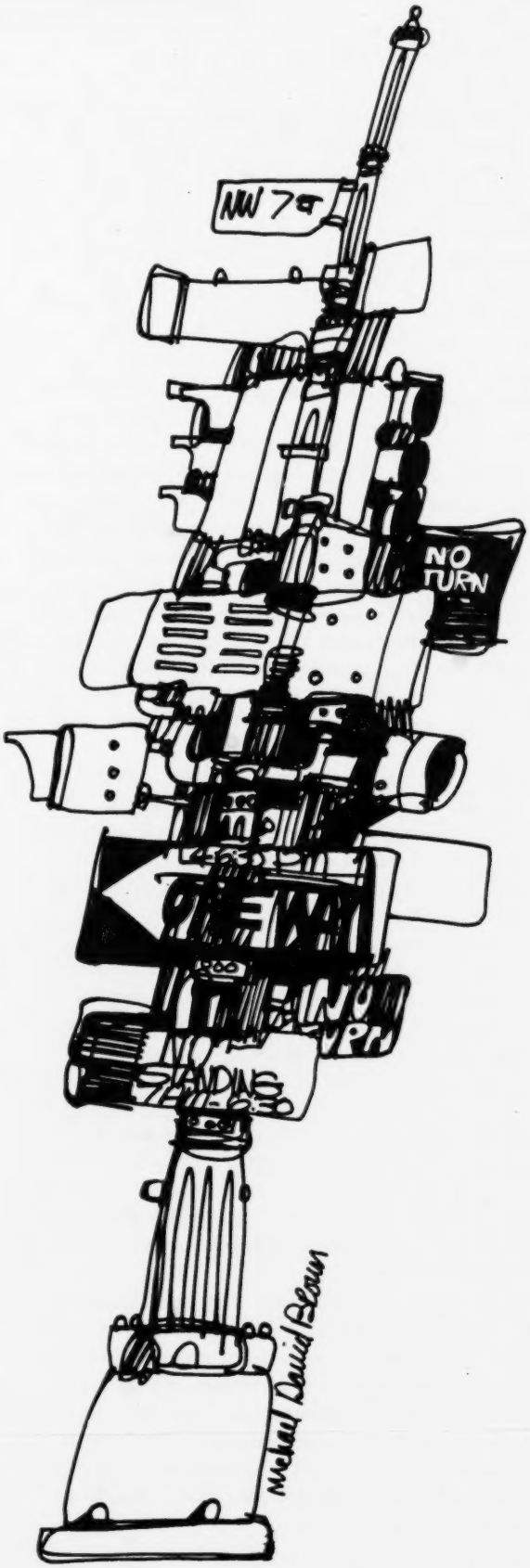
Several court cases have pierced the veil of deception represented by the economic argument. In 1970, the city of Lackawanna, New York, was the subject of litigation in Federal court for refusing to grant a building permit to a sponsor (who was black) of a low-income housing project. The city defended its position on the ground that the new units would be a burden on the city's sewer and water system. In addition, the city contended the proposed site was needed for a city park. The court found a different reason for the position of the city. Substantial evidence proved to the court that opposition to the low-income housing project was based on the "discriminatory sentiments of the community."

In a similar case in Lawton, Oklahoma, the city argued that its refusal to change a zoning law to permit construction of subsidized housing was based on the increased cost of public services which the new housing would require. But this court, too, ruled the hidden cause of the city's action was the racial prejudice of white residents.

At least one Federal court has ruled that a discriminatory *effect* is unlawful. When residents of a California town voted to block construction of a housing project to be occupied primarily by Mexican Americans, a Federal court ruled, even if the voters had not been racially motivated, the action was still unconstitutional, if it had the *effect* of keeping minority groups segregated. City officials, the courts said, have an absolute duty to consider the housing needs of minority families.

These cases indicate the courts understand the part racial attitudes play in opposition to low-income housing, and they have been unwilling to allow communities to maintain segregation by hiding behind a cloud of other issues.

President Nixon, in his 1971 "Statement on Federal Policies Relative to Equal Housing Opportunity" recognized the use of economic arguments as false justification for excluding minority homeseekers from a community. The President said: ". . . we will not countenance any use of economic measures as a subterfuge for racial discrimination." Three days after the President's statement, the Department of Justice initiated court action against the city of Black Jack, Missouri. Black Jack had been an unincorporated area until the announcement that a low-income housing project sponsored by a church group was to be constructed in the city. Residents of Black Jack opposed the project and offered a variety of economic burdens as their reason. The residents denied that race played a part in their decision. The Government's suit charges that Black Jack's rapid incorporation as a city and its immediate enactment of a law prohibiting new multiple-family dwellings had the continuation of racial segregation as its objective.



PROSPECTS FOR THE FUTURE

One lesson learned from the civil rights experience in the 1960's is there is no single path to resolving problems of racial injustice. The lesson was learned on a trial-and-error basis, as the Nation focused its attention piecemeal on civil rights issues—voting rights, jobs, public accommodations, and education—as though each provided the only solution. Housing came last.

Housing is one of the most complex and intractable areas in the civil rights field. A denial of the right to vote can be corrected instantly because thousands of disfranchised citizens can be registered to vote. While discrimination of the past is more difficult to overcome in employment and education, the Nation has achieved measurable results in these areas in a relatively short time.

In housing, the legacy of the past has a much stronger bearing on the present and future. Patterns of residence have developed over a period of decades in which government at all levels and private industry combined to establish a racially dual housing market—separate and unequal. The problem facing us now is not merely to end current discriminatory practices, but also to eliminate the effects of past discrimination and reverse the residential segregation that now exists. This is extraordinarily difficult and the answer does not lie in any single approach whether it be adoption of a fair housing law or breaking down existing suburban barriers—racial and economic—to minority residence. Rather, it lies in an across-the-board effort in which all elements of the housing industry, public and private, become active participants.

Despite the complex and difficult problems that face us in reversing patterns of residential segregation, prospects for the future are not entirely gloomy. There is evidence of change in housing policy and practice—change that is still small and insubstantial, but which can provide the basis for the kind of large-scale effort necessary.

The Federal Government, which years ago was an active exponent of housing discrimination and residential segregation, now maintains strong laws and policies favoring equal housing opportunity. State and local governments have changed their official position. A few decades ago these governments were either indifferent to the problem of housing discrimination or were insistent upon residential segregation. Today 33 States, including the border and Southern States of Kentucky, Maryland, and Virginia, and literally thousands of municipalities, have fair housing laws. Likewise, the policies of the housing industry have changed. Trade associations of mortgage lenders and builders, which in earlier years took positions in support of racial discrimination, now pledge support of the principles of fair housing. NAREB, which played a major role in establishing the separate housing market and led the unsuccessful fight against enactment of the Federal Fair Housing Law, now urges full compliance.

Nevertheless, a change in official policies, while a beginning, is not enough. The policies must be implemented if results are to be achieved. There are encouraging signs. In recent months HUD, which carries the major responsibility for enforcing the Federal Fair Housing Law, has issued a series of regulations in such areas as affirmative marketing requirements, site selection criteria, and fair housing advertising guidelines. These regulations are an effort to assure that HUD's programs of financial assistance advance the goals of fair housing. The General Services Administration, responsible for providing facilities for most Federal Agencies, has issued regulations concerning the selection of sites for Government installations to assure that lower-income and minority employees have access to housing. The Agencies that supervise mortgage lending institutions have started to accept their responsibilities under Title VIII by issuing regulations to assure that minority home buyers have equal access to mortgage credit.

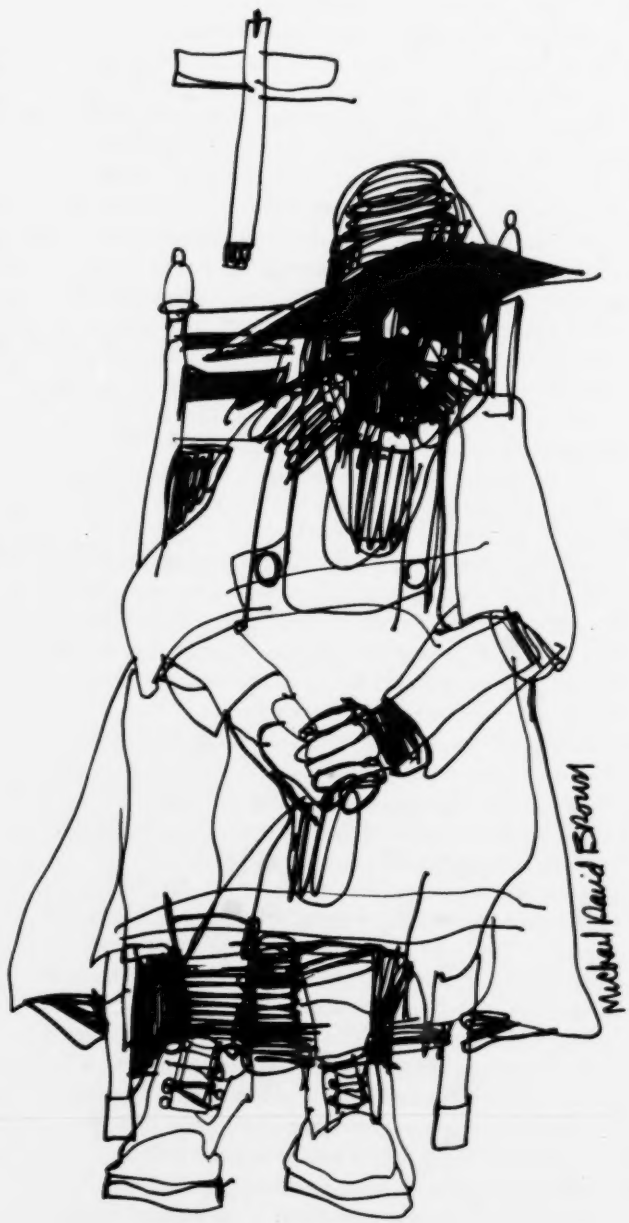
At the State and local levels, there are small but encouraging signs of action to overcome obstacles to the exercise of free housing choice, particularly the suburban exclusion of lower-income minorities. Several States have passed laws aimed at overcoming the barrier of exclusionary zoning laws that keep out low- and moderate-income housing. Thus, Massachusetts has enacted an "Anti-Snob Zoning Law," which establishes a quota for low- and moderate-income housing for each town in the State. New York has established a State Urban Development Corporation with power to override local zoning laws and other exclusionary land use controls to provide low- and moderate-income housing. Furthermore, in some metropolitan areas, communities that previously viewed each other with hostility are cooperating to develop plans by which they will accept the responsibility for meeting a fair share of the lower-income housing needs of the entire area. The Dayton, Ohio Metropolitan Area is the first to adopt such a plan and the Washington, D.C. Metropolitan Area has followed Dayton's lead. Other areas to take similar action include San Bernadino County, California, and the Twin Cities (Minneapolis-St. Paul), Minnesota. HUD is providing encouragement for widespread use of these "fair share" plans in other metropolitan areas. A few suburban communities have enacted ordinances requiring builders to set aside a percentage of their housing for lower-income families.

Private groups are increasingly active in the housing field. A few years ago, private activity was limited to the efforts of scattered fair housing councils and neighborhood stabilization organizations. Today the private fair housing movement has burgeoned, and the knowledge and the

sophistication of those involved in the movement have expanded. These groups are engaged in monitoring the effect of Federal housing programs. They are pushing for innovative State and local legislation that will expand housing opportunities throughout the metropolitan areas. And they are urging basic changes in the operation of the private housing market.

None of these developments, singly or in combination, has yet had a significant impact in altering the patterns of segregated racial residence. They must be greatly strengthened if real change is to occur. Fair housing laws—Federal, State, and local—must be enforced much more vigorously than they are now. Federal housing programs must be designed more precisely to achieve equal housing opportunity goals. States and localities must recognize that metropolitan areas represent single social and economic units and take stringent measures to assure that housing is available to all. Private industry—builders, brokers, and lenders—must reevaluate their traditional practices so they can contribute to achieving the goals of fair housing, to which they now pay little more than lip service. The number of organizations and individuals working in the field of fair housing must expand and impress their convictions and strength upon public and private housing officials who may think that the fair housing movement is a passing fad.

In the last analysis, we must ask who benefits from fair housing? The obvious and immediate beneficiaries are, of course, minority group families, who, in an open housing market, gain the benefits of a free housing choice long denied them. But fair housing is of vital importance to us all. The dual housing market has bred a variety of ills from which our whole society is suffering: the physical decay and financial insolvency of our cities; the irrational proliferation of jurisdictions in metropolitan areas separated from each other by race and income; and the racial alienation and distrust that make us strangers to each other. This is the legacy that the present generation has inherited from the past. It is we who will determine which legacy we leave our children.



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